

ML9 Handout
Torts I: Defamation
[slide numbers are in square brackets]

1) [2] Defamation

- a. Intentional Torts: An offensive and intentional action that causes actual harm to a person (ex: Battery)
- b. Unintentional Torts: When one person causes unreasonable harm to another (ex: Negligence)
- c. Intangible Torts: Harm to one's reputation (ex: Defamation)

2) [3] Defamation Elements

- a. Defamation is: (1) a _____ false statement _____ of fact; (2) _____ "of and concerning" _____ a person; (3) that is communicated, or _____ published _____ to a third party; (4) that causes _____ harm _____ to that person's _____ reputation _____; (5) fault (**actual malice or negligence**)
- b. Types of Defamation:
 - i. Slander - _____ spoken defamation _____
 - ii. Libel - _____ written/broadcast defamation _____
- c. Which one is easier to prove and why? _____
Libel is easier to prove because it is fixed and is more objective
- d. Who must prove the case and by what standard? _____
plaintiff by POE

3) [4] Element 1: False Statement of Fact

- a. Must be a statement of **fact** and not an opinion; the Plaintiff must prove that the statement was false
- b. Some States allow for libel by _____ implication _____ or **innuendo**, where the false statement creates a wrongful impression through the facts
- c. Case: *Memphis Pub Co. v. Nichols*: Newspaper publishes an article about woman who was hurt by gunshot. Article implies an inappropriate relationship, leaving the reader to believe something improper happened – is this defamation? _____ yes _____

4) [5] Element 2: “Of and Concerning”

- a. Deals with _____ who _____ the article or false statement is referring to (ex: Plaintiff is mentioned by their _____ name _____)

South Park
"all persons represented are not based on real people and any relations are purely coincidental"

- b. Can also refer to someone's **physical attributes** or **profession**
 - i. Can also refer to groups of people (ex: all TVF faculty)
- c. TV and movie broadcasts: characters/names based off or inspired by real people; Plaintiff must prove that a reasonable person would know the broadcast refers to the Plaintiff

5) [6] Element 3: "Publication"

yelp, social media, etc.

- a. Must be overheard by a third party, so it requires that at least one other person other than the source of the statement and the subject saw or heard the information
- b. Republishers are liable; however, vendors and distributors (ex: convenience stores, grocery stores) are exempt/immune from liability (ISP's/websites generally not liable)

6) [7] Element 4: Harm to Reputation

- a. Harms: statement causes harm to Plaintiff's (1) social relationships, (2) professional relationships, (3) financial security, (4) mental health, (5) loved ones
- b. **Slander and Libel "Per Se" Categories:** committing a crime or involvement in criminal activity, loathsome/infectious diseases, sexual misconduct, or misconduct in their business/profession
- c. If the libelous/slanderous statement falls into one of these "per se" categories, harm to reputation does not need to be proven need to be proven, as it is already been done

7) [8] Element 5: Falsity and Fault: The Public/Private Figure Distinction

- a. Level of Fault: Actual Malice or Negligence, depending on the type of Plaintiff
- b. Individuals are classified into:
 - 1) public figures; (celebrities/influencers)
 - 2) public officials (President/Congress); **and**
 - 3) private figures (no public notoriety)

8) [9] Types of Public Figures

a. **All-Purpose Public Figure** - someone who has become widely recognizable to the public, with great _____ fame or notoriety _____ or persuasive power
i. Ex: Kardashians, Elon Musk, Kanye, Emma Stone

b. **Limited-Purpose Public Figure** - someone whose profession bring them into public view and have voluntarily participated in a public controversy (Ex: _____ air traffic controller, Dr. Fauci _____)

c. **Involuntary Public Figure** - someone who has not voluntarily put themselves into a public controversy (ex: neighbors of criminals, wrongfully accused) (football coach of Cal State LA)

NY Times v Sullivan (1964)

Reckless disregard of truth:

not enough research on topic, untrustworthy sources, etc.

d. [10] **Standard of Fault:** Public figures/officials must prove actual malice _____ (AM), private figures only have to prove _____ negligence _____

e. **AM: (1) Knowing a statement is false OR (2) acts in reckless disregard of the truth**

f. [11] **Negligence Definition:** Negligence is _____ unreasonable conduct that causes another person actual harm _____

g. **Negligence Elements:** _____ duty _____ to act with reasonable care; _____ breach _____ is a violation of that standard of care; _____ causation _____ connects Plaintiff's harm to the Defendant's breach, and _____ damages _____ is the harm itself

h. [12] Courts use the *Hand* formula to determine breach and negligence – **B < P x L (spend a little to save a lot!)**
burden (or cost), probability of harm, likelihood of harm

9) [13] Defenses: Truth, Opinion, Fair Comment/Criticism, Absolute and Qualified Privilege, Single Mistake, Single Publication, SoL

a. Main defense in a defamation action: _____ TRUTH _____

[14] **The Opinion Defense**

b. **Ollman Test:** Professor who had job offer withdrawn due to op-ed article; court decided in favor of the _____ publisher

opinion pieces
and parodies
are protected

c. ***Ollman Four factor test*** - (1) can the statement be proven true or false (verifiability)? (2) **common use**; (3/4) **journalistic/social context**

[15] Fair Comment and Criticism

d. Comment must (1) be of **public concern**; (2) be based on true facts; (3) represent the opinion of the speaker; and (4) not be made for the **purpose of causing harm**

[16, 17] Fair Report Defense (Absolute and Qualified Privilege)

e. **Absolute Privilege/Fair Report** - immunity attaches to the maker of the statement. This defense applies to statements made in congress or in court

f. **[17] Qualified Privilege/Neutral Reportage** defense can be invoked if the report is “newsworthy**”; (2) the source is **responsible**; (3) the statements/record are reported **accurately**; and (4) the statements concern a **public official** or **public figure**

g. **[18] Newsworthiness Factors:** timing of a story, its significance, proximity to where event occurred, prominence of a public figure, and human interest

h. **[19] Single Mistake Rule:** Single inaccuracy can be **corrected or retracted**

i. **Single Publication Rule:** Plaintiff can only sue a publisher once

j. **Statute of Limitations:** 1 year from the date of a publication’s release

10)

[20] Damages

a. compensatory **damages**: reputational harm, emotional distress, pain and suffering

b. special **damages**: lost business, attorney's fees

c. punitive **damages**: publisher acted in bad faith. Only available for **public figures** who prove actual malice

d. **[21] Who is “defamation proof”?** deceased individuals, someone whose reputation is so bad that any defamation won't affect anything they would have to prove some "nexus" or correlation between the defamation and something bad that resulted of it